

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-311
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF THE COUNTY OF SAN DIEGO, CALIFORNIA

These Comments are filed by the County of San Diego ("County") in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). The County respectfully submits the following actual evidence that a local government can issue an appropriate local franchise for new entrants into the video services field on a timely basis, even when the franchise request raises significant public policy challenges. In support of NATOA's comments, we wish to describe to the Commission how video franchising has worked in our community.

Community Information

The County of San Diego is a county in California with a population of nearly 3 million. Our seven franchised cable providers include Adelphia Communications, Cox Communications, Time Warner Cable, Mediacom and Cable USA. The County serves as the local franchise authority for approximately 95,000 cable subscribers residing in the unincorporated areas of the County. The County has granted numerous cable franchises¹ and renewals since the 1960s, including a competitive "overbuilder" franchise granted to Western Integrated Networks ("WIN") in 2001.

¹ In our community existing cable "franchises" are termed "Licenses." The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, the County of San Diego has enacted a cable ordinance which operates in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

Our Current Franchises

Our current franchises were negotiated between 1986 and 1988 and expire between 2006 and 2008. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. At this time we are currently negotiating franchise renewals with Adelphia, Cox, Time Warner, Mediacom and Cable USA.

Each franchise contains standard language establishing identical terms and conditions for each provider. The franchises require the cable operators to pay a franchise fee to the County in the amount of 5% of the cable operator's basic cable receipts.² The revenues for franchise fee purposes are calculated based only on the revenues from the operator's basic cable service of the operator, which means that the County collects less than the maximum franchise fee allowed under the Federal Cable Act.

We require the cable operators to provide capacity for public, educational, and/or governmental ("PEG") access channels on the cable system.³ We currently have one channel devoted to public access; one channel devoted to educational access; and one channel devoted to government access.⁴ Our franchises do not require any additional funding or capitol grants for our PEG channels, or for Institutional Network (INET), support.

Our franchises also contain customer service requirements⁵ that closely follow the FCC Customer Service Standards, which help us ensure that the cable operator is treating our residents in accordance with federal standards and the terms of its franchise. We receive dozens of contacts annually regarding cable service issues, many of which we resolve by contacting the cable operators on behalf of the customer.

² *County Code of Regulatory Ordinances* ("County Ordinance") § 21.1624 (Available online at http://www.amlegal.com/sandiego_county_ca/).

³ *Id.* §§ 21.1630; 21.1668.

⁴ We use the government channel not only for cablecast of County government meetings and informational programming about County services, but also as an integral part of our emergency response and recovery efforts. Therefore, the County considers the channel to be an essential facility, and desires to keep the channel available to as many County residents as possible.

⁵ *County Ordinance* § 21.1651.

Our original franchise requirements included a 5-year build out of designated service areas.⁶ Most populated areas of the County were built out many years ago. However, some areas of the County are too remote or sparsely populated to make provision of service economically feasible, and those areas are excluded from the build-out requirements.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. The County's franchising process specifically provides procedural safeguards to ensure the process is fair to both the incumbent provider and the competitive entrant. These safeguards include:

- Provision in the County Ordinance that existing franchises are non-exclusive and shall not prevent the County from granting another franchise within the same areas;⁷
- Specified procedures for granting competitive franchises, including a streamlined application process, expedited public hearing, and limits on franchise terms and conditions set forth in the County ordinance;⁸
- Requirement that a decision be made on a new franchise request within 120 days of submission.⁹

⁶ *Id.* § 21.1621.

⁷ *Id.* § 21.1622.

⁸ *Id.* §§ 21.1670 – 21.1677.

⁹ *Id.* § 21.1673.

In addition, California has enacted a “level playing field” statute that requires competitive entrants to agree to the same terms and conditions as the incumbent provider.¹⁰ The County’s application process requires the competitive provider to file a statement verifying that it will agree to the same terms as the incumbent at the time the application is first submitted. We found that this verification resolved “level playing field” issues early in the process, and reduced the risk of time-consuming disputes raised by incumbent operators.

Competitive Cable Systems

The County of San Diego has never denied any provider the opportunity to serve in our community. In 2000 the County discussed granting competitive franchises to several different overbuilders, including RCN, Wide Open West (“WOW”) and Western Integrated Networks (“WIN”). In 2001, our community granted a competitive franchise to WIN, a cable overbuilder; however that provider subsequently declared bankruptcy and is not providing service in the County today.¹¹ The other competitive providers later determined that the County cable market did not meet their business plan objectives, and voluntarily ended franchise discussions.

Although the WIN competitive franchise took nearly one year to complete, the negotiations were put on hold for nine months at the request of WIN, to allow the overbuilder to negotiate an agreement with the City of San Diego first. Not counting this delay, the entire process took about 90 days.

The challenge for the County in this case was our finding that the existing franchise agreements were over 15 years old and no longer served the public interest. The only time it is not prudent to offer the existing cable franchise to competitive entrants is when that franchise has already expired or is nearing renewal. During those periods, a local jurisdiction must be allowed to negotiate terms not in the existing franchise but that address public interest issues that have arisen subsequent to the grant of that franchise.

¹⁰ Cal. Govt. Code § 53066 *et seq.*

¹¹ Unfortunately, the timing of this build-out coincided with the bursting “dot.com” bubble and the plunging stock market during the early part of this decade. These economic factors made the high cost of overbuilding impractical at that time.

However, even though we could not simply extend the same terms and conditions as those applicable to incumbent cable operators, we were able to develop a franchise acceptable to WIN in a very short period of time. As part of that process, the County amended its Ordinance to update franchise requirements to allow the County to quickly extend an offer a comparable franchise to a competitor upon request.¹² In addition to these new terms, the competitive provider also agreed to a five year build-out timetable covering all areas of the County with sufficient density.

We found this competitive franchise process to go extremely well, with very few disputes over franchise terms, and no contests or formal protests from either the incumbent operator or the public.

Conclusions

As the above information indicates, the cable franchising process has worked well in the County of San Diego. Local governments are experienced at working with cable providers to ensure that both the needs of the local community and the practical business needs of cable providers are met.

Local franchises provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional

¹² *County Ordinance* § 21.1678, which in part changed the name of the agreement from “license” to “franchise,” reduced the term of new franchise from 20 to 15 years, and changed franchise fee calculations to a “gross revenues” basis. The new operator was advised that existing franchises would be modified to include these terms upon renewal, and that that County would be willing to temporarily waive these new provisions until all operators became subject to the same terms.

networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The County of San Diego therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

County of San Diego, California

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